



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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February 27, 2015

Darryl Linear Anderson - #171085
New Castle Correctional Facility
P.O. Box A
New Castle, Indiana 47362

Re: Formal Complaint 15-FC-18; Alleged Violation of the Access to Public Records Act by Judge Kurt Eisgruber

Dear Mr. Anderson,

This advisory opinion is in response to your formal complaint alleging Judge Kurt Eisgruber and the Marion County Superior Court ("MCSC") violated the Access to Public Records Act, Ind. Code § 5-14-3-1 *et. seq.* The MCSC has responded via Ms. Emily VanOsdol, Court Administrator. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 22, 2015.

BACKGROUND

Your complaint dated January 22, 2014 alleges the Marion County Superior Court violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On December 16, 2014, you submitted to the MCSC a public records request seeking access to records regarding whether Judge Carol J. Orbison was working as a judge on specified dates and information to determine when a particular judge would be presiding over a case. On December 29, 2014, you sought additional information regarding a warrant. In both cases, no written acknowledgement was tendered to you as required by APRA.

On February 6, 2015, Ms. Emily VanOsdol contacted PAC. According to Ms. VanOsdol, the court determined no records responsive to your first request could be found. Additionally, Ms. VanOsdol discloses that no guideline exists for when a judge may sit on a case. Finally, no records responsive to your second request exist because no hearing was held.

DISCUSSION

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Marion County Superior Court is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Court’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

A public agency is not required to create a record exclusively for the purpose of responding to a public records request. To the extent the Court does not maintain the information you seek in the form of a public record, it did not violate the Access to Public Records Act. They are obligated, however, to send you written acknowledgement of your request within seven days of receipt pursuant to Ind. Code § 5-14-3-9(b). A denial must accompany a written statement as to why it was denied and the name of the decision-maker. See Ind. Code § 5-14-3-9(d)(2).

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Marion County Superior Court has acted contrary to the Access to Public Records Act by failing to acknowledge your request within seven days, but did not violate the APRA by denying the records if they do not maintain the records you seek.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Emily A. VanOsdol